

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Ameren Transmission Company of Illinois	:	
	:	
Petition for a Certificate of Public Convenience	:	
and Necessity, pursuant to Section 8-406.1 of	:	
the Illinois Public Utilities Act, and an Order	:	
pursuant to Section 8-503 of the Public Utilities	:	No. 12-0598
Act, to Construct, Operate and Maintain a New	:	
High Voltage Electric Service Line and Related	:	
Facilities in the Counties of Adams, Brown, Cass,	:	
Champaign, Christian, Clark, Coles, Edgar,	:	
Fulton, Macon, Montgomery, Morgan, Moultrie,	:	
Pike, Sangamon, Schuyler, Scott, and Shelby,	:	
Illinois.	:	

**RESPONSE OF MOULTRIE COUNTY PROPERTY OWNERS TO
PETITION TO INTERVENE AND DUE PROCESS MOTION TO STRIKE
PROCEEDINGS AS TO THE MT. ZION TO KANSAS SEGMENT**

COME NOW the Moultrie County Property Owners ("MCPO"), by their attorneys, Lueders, Robertson & Konzen, and in response to the Petition to Intervene and Due Process Motion to Strike Proceedings as to the Mt. Zion to Kansas Segment, filed by the Trustees of the Channon Family Trust (Nancy C. Wiest, John L. Channon, and Brian C. Channon) ("Petitioners") state as follows:

1. Petitioners, Co-Trustees of the Channon Family Trust, request intervention allegedly for the purpose of enforcing their due process rights in this case. In doing so, they agree to accept the record as same "exists at the time of the intervention" (Petition Par. 5). At the same time Petitioners move to strike a portion of the record proceedings to date "as they pertain to the Mt. Zion to Kansas segment of the Illinois Rivers Project ("Project")". (Petition Par. 3).

2. Petitioners' Motion to Strike prior proceedings as to the Mt. Zion to Kansas segment of the Project should be denied.

3. To the extent that notice requirements exist at all, they are imposed on the utility under Section 8-406.1 of the PUA. (220 ILCS 5/8-406.1). Notice under that section takes the form of public meetings in the counties where the project is located. (220 ILCS 5/8-406.1(a)(3)). The utility is also required to publish notice in newspapers of general circulation within the county, once a week for three consecutive weeks and to file notice with the clerk of each county where the project is located. (*Id.*). Furthermore, the utility is required to public notice of its filing in the State Newspaper and establish a website for the Project. (220 ILCS 5/8-406.1(d) and (e)). ATXI has met these notice requirements, conducting the required meetings, publishing the required notices and provide notice to the county clerk of Douglas County. (The county in which Petitioner's property is located.) (*See*, Murphy, ATXI Ex. 4.0 at 3-4, 14, 22 and Exs. 4.1, 4.7 and 4.8). Thus, statutory requirements for notice by the public utility have been complied with in this case. The relevant statute does not impose any requirement upon MCPO or other parties to provide notice.

4. Petitioners state that they did not receive "proper notice of this proceeding" as required by law. (Petition Par. 6). MCPO respectfully disagrees that Petitioners, as landowners, "were required by law to receive notice of the proceedings". Landowners in a case involving the issuance of a Certificate of Public Convenience and Necessity have no affected property interest that entitled them to due process right to notice. (*See* Pars. 6 and 7 below). Notice requirements for this case are described in Section 8-406.1 of the PUA and applicable rules, and have been complied with.

5. This case involves the Petition for Ameren Illinois Transmission Company (“ATXI”) for a Certificate of Public Convenience and Necessity under Sections 8-406.1 and 8-503 of the Public Utilities Act (“PUA”). (220 ILCS 5/8-406.1 and 8-503).

6. The Commission itself has concluded in prior cases “... landowners were entitled to no notice of the Certificate case, . . .”. (*Quantum Pipeline Company*, ICC Dkt. 96-0001 and 96-0318 (Cons.), Final Order, December 17, 1997, 1997 Ill. PUC LEXIS 873 *38). In that case, the Commission observed that the Illinois Supreme Court has held landowners along a certification path (route) are not deprived of their property or any interest in their property in such a certificate case. Therefore, they have no right to notice. (*Id.*).

7. The Illinois Supreme Court has held that: “No property or property rights of landowners are taken, nor are such rights affected by anything that occurs in the hearing . . . for a certificate of convenience and necessity. Such property owners are not entitled to notice of such a hearing . . .” (*Zurn v. Chicago*, 389 Ill. 114, 132, 59 N.E. 2d 18, 27 (1945)).

Furthermore, in the case of *Chicago Burlington and Quincy Railroad Co. v. Cavanaugh*, (278 Ill. 609, 116 N.E. 128 (1917)), property owners, in a case involving a Commission determination that the public convenience and necessity required relocation of certain rail tracks, claimed they were not served with notice of the hearing or served with the Commission order finding that the public convenience and safety required relocation of the tracks. The Court said in response: “The order of the commission did not amount to an appropriation of the defendant’s property or any interest in it. . . so that there was no violation of the due process clause of the constitution.” (*Id.* at 617). Therefore, Petitioners, have no due process right of notice in this case.

8. Neither the law nor Commission rules impose any obligation on MCPO, as an intervener in this case, to provide any other property owners with notice. As noted in Paragraph 3 above, the responsibility to provide the notice required by statute is imposed on the utility, and that responsibility was met by ATXI.

9. Failure to provide an address for a property owner, identified on the list of property owners, along the proposed alternate routes, used by the Commission Clerk to serve notices in this proceeding, is not a basis for striking any portion of the prior proceedings in this case or the striking of the proceedings relating to the Mt. Zion to Kansas segment of the Project in particular. The only Commission rule requiring that notice be given to owners of record is contained in 83 Ill. Adm. Code Section 200.150(h). That rule requires the utilities to provide a list of property owners used by the Clerk of the Commission to mail notice of the proceeding. However, the rule provides “. . . the omission of a name and address of an owner of record from the list shall in no way invalidate a subsequent order of the Commission relating to the application.”¹ (*Id.*). Therefore, it is clear that the Commission does not intend that the failure to include a landowners name or address on a list of property owners, used by the Commission Clerk’s office to mail notice, be the basis for striking portions of the proceedings in this case, or any case pending before the Commission. Intervening landowners should not be held to a higher standard than a utility, subject to Section 200.150(h),

¹ The rule applies to applications filed under Sections 8-503 and 8-406 of the PUA. ATXI’s filing was filed under Section 8-503 (as well as Section 8-406.1). Thus, the rule appears to apply in this case.

seeking a Certificate of Public Convenience and Necessity. The failure to include such a name and address does not invalidate any Commission order in this case.

10. MCPO made a good faith effort to comply with the order of the Administrative Law Judges of December 14, 2012 directing that interveners identify alternative routes they intended to recommend and provide a list of potentially affected property owners by December 31, 2012. Failure to include the Petitioner's full address was inadvertent and unintentional. Striking the prior proceedings on the Mt. Zion to Kansas route would be an extreme reaction and would set a dangerous precedent for future cases. The utility and the interveners have invested relatively large amounts of time and money in presenting their position to the Commission. It would be unfair and inequitable to strike a portion of the proceedings, as requested by Petitioners, at this stage of the case because an address was not included in the list used by the Commission Clerk to provide notice to property owners, especially when property rights are not at issue.

The record reflects the various positions and arguments regarding the the Kansas to Mt. Zion segment of the project. Numerous property owners have been able to make arguments for and against various routing proposals. It is doubtful, under these circumstances, that the failure of a particular property owner to participate in this case because he or she lacked notice of same, demonstrates that the Mt. Zion to Kansas segment of the Project has not been fully vetted by the parties or that the interests of property owners along the various routes inadequately represented. Furthermore, ATXI has committed to working with individual landowners regarding location of and adjustment to facilities that may be constructed on their property. (Murbarger, ATXI Ex. 16.0 Rev. At 5-6:75-92).

Under such circumstances, it would be an extreme remedy indeed to strike all prior proceedings on the Mt. Zion to Kansas segment of the Project at this point in the case.

11. In addition, the Petitioners cannot on one hand meet the requirements of intervention in this proceeding by saying that they accept the status of the record in this case, and at the same time, move to strike all the prior proceedings on a particular route segment. The Petitioners are required by Commission rules to accept the status of the record in the contest of its intervention. (83 Ill. Adm. Code Part 200.200(e)). Petitioners should not be permitted to intervene in this case on the basis of their acceptance of the status of the record and at the same time, move to strike prior proceedings. Petitioners cannot have it both ways. They cannot at the same time accept the record and propose to alter it by striking all prior proceedings relating to the Mt. Zion to Kansas segment of the project.

12. The Petitioner's reliance on the Illinois Administrative Procedures Act ("APA") is misplaced. (Petition Par. 7). The Petitioners were not parties to this proceeding and did not request to become parties until July 15, 2013. Therefore, the provisions of that Act were not applicable to them earlier in this case. (See, Section 1-55 of the APA, (defining parties as each person named or agency named or admitted as a party or properly seeking and entities as of right to be admitted as a party.) (5 ILCS 100/1-55)). In addition, it is worth noting in the case cited by the Petitioners in support of their argument that Section 10-25(a) of the APA (5 ILCS 100/10-25(a)) requires that they be afforded an opportunity for hearing after reasonable notice, does not actually support Petitioner's argument. In the case relied upon by Petitioners, *People ex rel Illinois Commerce Commission v. Operator Communication, Inc.*, (281 Ill. App. 3d 297, 666 N.E. 2d 830, ((1st Dist. 1996))), the Court

considered “under what circumstances the Illinois Commerce Commission may seek an injunction under Section 4-202 of the Public Utilities Act without first affording a public utility a hearing before the Commission.” (*Id.* at 98). In that case, it was the individual legal rights, duties or privileges of the public utility, which was regulated by the Illinois Commerce Commission, which were at issue. In this case, the Petitioner’s legal rights, duties or privileges are not at issue. As noted in Paragraph 7 above, land owners in a case involving the issuance of a Certificate of Public Convenience and Necessity have no affected property right and therefore are not entitled to due process notice.

CONCLUSION

For the reasons stated above, Petitioners’ Motion to Strike should be denied, if their Petition for Intervention is granted.



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PROOF OF SERVICE

STATE OF ILLINOIS :
 : SS
COUNTY OF MADISON :

I, Eric Robertson, being an attorney admitted to practice in the State of Illinois, and one of the attorneys for the Moultrie County Property Owners, herewith certify that I did on the 18th day of July, 2013 electronically file with the Illinois Commerce Commission the Response of MCPO to Petition to Intervene and Due Process Motion to Strike Proceedings as to the Mt. Zion to Kansas Segment, and electronically served same on the persons identified on the Commission's official service list.


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SUBSCRIBED AND SWORN TO before me, a Notary Public, on this 13th day of July, 2013.


Notary Public

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